BORA LASKIN LAW LIBRARY
3 1761 10631813 2

CONSTITUTIONAL LAW

CASES AND MATERIALS

VOLUME III

DICK RISK, CAROL ROGERSON AND LORRAINE WEINRIB

UNIVERSITY OF TORONTO

1990-91

BORA LASKIN LAW LIBRARY

MAR 25 1991

FACULTY OF LAW
UNIVERSITY OF TORONTO

BORA LASKIN LAW LIBRARY
UNIVERSITY OF TORONTO

CONSTITUTIONAL LAW

CASES AND MATERIALS

VOLUME III

DICK RISK, CAROL ROGERSON AND LORRAINE WEINRIB

UNIVERSITY OF TORONTO

1990-91

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/constitutionalla03risk

CONSTITUTIONAL LAW

TABLE OF CONTENTS

VOLUME III

THE CHARTER PART I: AN INTRODUCTION TO THE CHARTER

PAGE #

CHAPTER 1 RIGHTS TALK

Szabo, "Historical Foundations of Human Rights" 766
Shestack, "The Jurisprudence of Human Rights" 768

CHAPTER 2 PROTECTION OF RIGHTS APART FROM THE CHARTER

Gibson, The Law of the Charter: General Principles 776
Dicey, The Law of the Constitution 794
Schmeiser, Civil Liberties in Canada 798
Reference re Alberta Statutes 809
The Canadian Bill of Rights 816

CHAPTER 3 PROTECTION OF RIGHTS APART FROM THE CHARTER A CASE STUDY: RACE AND THE CONSTITUTION ACT, 1867

The Chinese in Canada 818
Union Colliery v. Bryden 826
Cunningham v. Tomey Homma 830
Quong Wing v. The King 833
Ryder, "Racism and the Constitution" 853
Ujimoto, "Racism, Discrimination and Internment" 859
Cooperative Committee on Japanese Canadians v. A.G. Canada . 865

CHAPTER 4 THE COMING OF THE CHARTER

Gibson, The Law of the Charter: General Principles 871

CHAPTER 5 PERSPECTIVES ON THE CHARTER

Weiler, "Rights and Judges in a Democracy" 878
Macdonald "Postscript and Prelude ..." 887
Hutchison and Petter, "The Liberal Lie of the Charter" . . . 900
Weinrib, "Two Models ..." 910

THE CHARTER PART II: THE STRUCTURE OF THE CHARTER

PAGE #

CHAPTER 6 PRINCIPLES OF INTERPRETATIONS

Law Society of Upper Canada v. Skapinker 921
Hunter v. Southam 924
R. v. Big M Drug Mart Ltd. 926
Reference re Section 94(2) of the Motor Vehicle Act (B.C.) . 953
Note: R. v. Beauregard 956
Note: Reference re Public Service Employee Relations Act . 957
Note: Continued Relevance of the Bill of Rights 959

CHAPTER 7 SECTION ONE

i) International Comparisons

International Covenant on Social, Economic and Cultural Rights, Article 4 962
European Convention, Article 11 962

ii) Legislative History

Bayefsky, "Section One: The Legislative History" 963
Draft of Charter, July 4, 1980 966

iii) Reasonable Limits

A.-G. Quebec v. Quebec Association of Protestant School Boards 969
Re Singh and Minister of Employment and Immigration 978
R. v. Oakes 982
Edwards Books and Art Ltd. v. The Queen 986
Edmonton Journal v. Attorney General For Alberta 1005

iv) Prescribed by Law

Note: Sunday Times v. United Kingdom 1009
Re: Ontario Film and Video Appreciation Society and Ontario Board of Censors (Ont. H.C.) 1009
Re: Ontario Film and Video Appreciation Society and Ontario Board of Censors (Ont. C.A.) 1016
R. v. Therens 1018
Note: R. v. Robson; Re Luscher and Deputy Minister of Revenue Canada, Customs and Excise 1019
Attorney-General of Quebec v. Irwin Toy 1020
Note: R. v. Red Hot Video; Re Southam Inc. and the Queen; Re Horbas et al. and Minister of Employment and Immigration et al. 1022

CHAPTER 8 THE OVERRIDE

Weiler, "The Evolution of the Charter: A View from the Outside" 1023
Federal-Provincial First Ministers' Conference, Fact Sheet . 1026

PAGE #

Ontario Human Rights Code: s. 42(2) and (3) 1026
Canadian Bill of Rights: ss. 1 and 2 1027
Mandel, "The Charter of Rights and the Legalization of Politics in Canada 1028
Alliance des Professeurs de Montréal v. A.-G. Quebec 1031
Ford v. A.-G. Quebec 1038
Greschner and Norman, "The Courts and Section 33" 1033
Weinrib, "Learning to Live With the Override" 1047

CHAPTER 9 APPLICATION

i) The Debate about Application to Private Action

Retail, Wholesale & Department Store Union Local 580 v. Dolphin Delivery Ltd. 1054
Elliott and Grant, "The Charter's Application in Private Litigation" 1063
Hutchinson and Petter, "Private Rights/Public Wrongs: The Liberal Lie of the Charter" 1076
Whyte, "Is the Private Sector Affected by the Charter?" 1077

ii) Post Dolphin Delivery: Finding Governmental Action

Note: Re McCutcheon and City of Toronto; Re Klein and Law Society of Upper Canada; Operation Dismantle v. The Queen 1083
Swinton, "Application of the Canadian Charter of Rights and Freedoms" 1085
Gunther, "Court Elaborations of the State Action Concept in the 20th Century" 1087
McKinney v. University of Guelph 1089
Harrison v. University of British Columbia 1095
Note: Stoffman v. Vancouver General Hospital; Douglas/Kwantlen Faculty Assn. v. Douglas College 1098
Re Lavigne and Ontario Public Service Employees Union . . . 1099
Note: Crown Corporations (Canadian Union of Postal Workers v. Canada Post Corp; Bartello v. Canada Post Corp.) . . 1100

CHAPTER 10 STANDING AND INTERVENTION

Minister of Justice of Canada v. Borowski 1101
Note: Minister of Finance of Canada v. Finlay 1113
Note: Standing Under the Charter 1114
Note: Amicus Curiae in Constitutional Litigation 1116

PAGE #

Ontario Rules of Civil Procedure 1117
Rules of the Supreme Court of Canada 1118
Borowski v. Minister of Justice 1120
Reference Materials 1123

CHAPTER 11 REMEDIES

i) Declaration of Invalidity

Gibson, The Law of the Charter, "Remedies" 1124
Reference re Language Rights Under the
Manitoba Act, 1879 1127
Re Dixon and Attorney-General of British Columbia 1141

ii) Reading Down; Constitutional Exemption

Rogerson, "The Judicial Search for Appropriate Remedies
Under the Charter" 1145
Gibson, The Law of the Charter 1150
Note: R. v. Videoflicks; R. v. Chief 1152

iii) Underinclusive Laws

Note 1158
Gibson, The Law of the Charter 1159

iv) Structural Injunctions

Swann v. Charlotte Mecklenburg Board of Education 1161
Sharpe, "Injunctions and the Charter" 1165
Marchand v. Simcoe County Board of Education 1169

CHAPTER 12 FREEDOM OF RELIGION AND CONSCIENCE

Various Guarantees of Freedom of Religion

James, "The Varieties of Religious Experience",
excerpt 1172
R. v. Videoflicks 1173
Miscellaneous Newspaper Clippings 1175
Re Regional Municipality of Peel et al. and Great Atlantic
and Pacific Co. of Canada Ltd. 1181
R. v. Big M Drug Mart Ltd., supra 926
Edwards Books and Art Ltd. v. The Queen, supra 986
Zylberberg v. Director of Sudbury Board of Education 1188
Re: Corporation of the Canadian Civil Liberties Association
and Minister of Education 1203
Reference to an Act to Amend the Education Act (Ontario) . . 1213